

Arkansas, Inc.

News for Arkansas Corporations from Secretary of State Charlie Daniels

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www.sos.arkansas.gov

Franchise Tax Collections Up for 2005

Nobody likes the idea of higher tax bills, but that is exactly what Arkansas incorporated businesses and LLC's experienced this past spring.

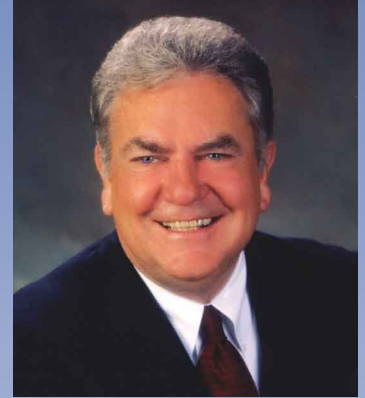
As part of the revenue package to address the Lakeview Supreme Court Case ruling, the Arkansas Legislature increased the corporate franchise tax. The State Supreme Court ruled that the Arkansas Public School System had not been providing an adequate education to some of its students, and increased funding for schools was seen as part of the solution. The collection of the increased franchise tax fell on the Arkansas Secretary of State's office.

Secretary of State Charlie Daniels takes pride in the efforts he has taken to make the payment of these taxes as convenient as possible. He is also pleased to share

the results of the collections so far this year. The following table shows comparisons based on tax deadline dates for 2004 and 2005.

In addition to increasing franchise taxes, Act 94 of the second extraordinary session of 2003 changed the due date for these taxes from June 1 to May 1 of each year. This act also directed the deposit of these funds into the state treasury to be credited to the revenue holding fund account of the state apportionment fund. The State Treasurer's office will then transfer a total of \$8 million into the general fund. These taxes go towards providing money for all aspects of state government including state aid to public schools, higher education, prisons, and health and human services. The State Treasurer will

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Secretary of State Charlie Daniels

In this issue of *Arkansas, Inc.*, you'll find articles that explain the effects of recent legislation, on Notary Public commissions, signatures on franchise tax forms and corporate entities transacting business without authority.

Our goal is to provide the business community in Arkansas with ways to improve services to their constituents and at the same time, make dealing with state government as painless as possible.

Two of these laws take effect August 12, 2005 but will not be available on our web site until January 1, 2006, which is the new reporting year. All three of these laws are designed to move Arkansans toward the cutting edge of business practices.

Under the new notary law, which takes effect January 1, 2006, persons with identical or similar names should no longer be a matter of confusion. Unique ID numbers will be issued

(See *LETTER* on page 3)

Arkansas Franchise Tax Filings

	Processed as of 2004 Deadline (June 2, 2004)	Processed as of 2005 Deadline (May 2, 2005)
Total Filings	38,383	44,805
• Online	5,413 (14%)	9,552 (21%)
• Reg. Mail	32,970 (86%)	35,253 (79%)
Entities Dissolved	894	773
Revenue at Deadline	\$3,554,443.33	\$7,219,103.73
Total for Year	\$9,277,254.46	\$14,000,000.00 (est.)

Business and Commercial Services

FAQ ***Frequently Asked Questions***

Q: How do I obtain copies of articles filed in your office?

A: Copies of corporate files can be obtained through our Corporate Records Department. Please contact this department through our main switchboard at (501) 682-3409, (888) 233-0325, or by e-mail at corporations@sos.arkansas.gov.

Q: How do I perform a corporate name search?

A: Name searches can be performed through the Secretary of State's website. Staff members in the Division of Business & Commercial Services can also perform name searches. Please feel free to contact this office for assistance with name searches.

Q: Does your office provide notary stamps for new applicants?

A: No, notary stamps can be purchased through an office supply store. Some notary bonding companies will offer these stamps when purchasing a bond.

Q: How do I change the address of my corporation?

A: Submitting a letter signed by a corporate officer to the BCS office can change the physical address of a company. To change the registered agent of a company, a filing must be executed online, by mail or by coming to the BCS offices at 1401 West Capitol Ave., Suite 250, Little Rock, Ark.

Q: I am selling my company. Do I need to file any paperwork with the Secretary of State's office?

A: Yes, an amendment needs to be filed. Any changes in a company's original articles must be filed with an amendment.

Q: My company is a non-profit. Am I required to file an annual report?

A: No, not with the Secretary of State's office. There are reports to file with the IRS. Please check with the Internal Revenue Service for information regarding these reports.

Q: Why didn't your office send my annual franchise tax report?

A: It is the responsibility of the customer to make sure our office has the correct address on file. If your company has not received an annual report, contact our office with an updated address and a report form will be mailed.

Q: Your website says our company is "revoked." What does this mean and how can I fix this problem?

A: Revoked means the company has not met all franchise tax obligations with the Secretary of State's office. To reinstate the company, the annual report must be filed and all delinquent taxes paid.

Q: What is the difference between a DBA (Doing Business As) and a fictitious name?

A: There is really no difference between the two. The Secretary of State's office refers to DBA's as fictitious names.

Q: If I stop doing business, do I need to let your office know or just the Department of Finance?

A: When companies stop doing business, articles of dissolution MUST be filed with the Secretary of State's office before it is considered closed. If the company stops doing business three years prior and neglects to notify the Secretary of State's office, the past three years of taxes must be paid prior to being dissolved.

FREQUENTLY REQUESTED PHONE NUMBERS

Department of Finance & Administration	501.682.2242
Federal I.D. Numbers (IRS)	1.800.829.4933
Attorney General's Office	501.682.2007
Contractors Licensing Board	501.372.4661
U.S. Patent & Trade Office	501.682.2053
Arkansas General Information	501.682.3000
Income Tax 501c3	501.682.4775

Reminder

Corporations that have not paid Annual Franchise Tax for the reporting year 2005 will be revoked, effective January 2, 2006.

Pay past-due taxes online at www.sos.arkansas.gov

New Laws to Impact Arkansas Businesses

Now that the 85th Session of the Arkansas General Assembly is complete, it is time to review the new laws that will affect the business organizations registered to do business in Arkansas. The Arkansas Secretary of State's office supported several proposed changes to laws affecting the business community. The following list details the legislation that passed into law.

Act 883 of 2005 – Adds the phrase “or other authorized person” to the list of officers who can sign a franchise tax report. Currently persons who can sign the report for the entity are the president, secretary, treasurer or controller. This new option will apply to online reports, as well as traditional paper reports, that will be due May 1, 2006.

Act 1925 of 2005 – Standardizes the civil penalty that can be assessed on a “for-profit” or “non-profit” corporation that transacts business in the state of Arkansas without authority. When this law becomes effective in August of this year, a foreign or out-of-state corporation that fails to acquire a Certificate of Authority will be subject to the same penalties that are currently outlined in the Uniform Limited Liability Company law. Penalized corporations will be required to pay all fees, franchise taxes and penalties that would have been owed if the corporation had been properly registered in the state to do business. An additional penalty, not to exceed \$5,000 per year of operation, can also be levied.

Act 2274 of 2005 – Clarifies and updates the Arkansas notary law. The act: a) clarifies the effective date of a notary public's commission as the date the commission is issued by the Secretary of State; b) changes the authority to approve the surety bond or contract from the Circuit Clerk to the Secretary of State; and c) changes responsibility of notifying the clerk of personal information changes from the Secretary of State to the notary public.

The codification of the wording for the declaration or oath a notary public must take is another change made by Act 2274. The new declaration includes the following statement, “...I have carefully read the notary laws of this state...” The new act also requires that a change in the notary's mailing address is information that must be updated on the records of the Secretary of State within 30 days of the change. Beginning on January 1, 2006, when this act becomes effective, the Secretary of State will issue each notary public a commission number. This number will be required to be placed on the notary's new official seal. The commission number will allow the Secretary of State to cancel a specific seal in case it is lost or stolen. A new commission number will then be issued to replace the cancelled number.

Act 1158 of 2005 – Makes technical changes to the Limited Partnership law. The passage of the Revised Limited Partnership Act of 1991 repealed many sections of old code dealing with partnerships. As a result, several voids existed in the code after repealing language in the code became effective January 1, 2005. This act added necessary language to fill in the gaps.

Other legislation that was introduced but did not pass included HB 2406, which attempted to revise and standardize the Secretary of State's Division of Business and Commercial Services fee schedule, and HB 1261, which was to become the new Uniform Limited Partnership Act of 2005. Both of these bills were retained in committee and will be studied for future consideration.

Additional legislation dealing with notaries public is detailed in the **Notary Corner** on page 4.

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with each notary commission, including renewals. We're going a step further to offer free monthly Notary Seminars in Little Rock and across the state to make sure notaries public understand their obligations and the laws affecting their notary duties.

In the next reporting year, filling out Annual Franchise Tax forms will be even easier. Agents, accountants, and service companies can now sign Annual Tax Forms whether executed online or by mail when accompanied with payment. The law is effective August 12, 2005. By calling our office, special arrangements will be made for the third party signature before it is available on our website. I applaud the savings of time and money for these companies.

The law regarding foreign companies doing business in Arkansas has been expanded. Any company located outside Arkansas but transacting business in the state can be penalized if they do not register in Arkansas. This law also went into effect August 12, 2005.

I am also pleased to announce the marked success of our first franchise tax reporting year under the new May 1st deadline and tax increase enacted by the Second Extraordinary Session of 2003. The changes yielded an increase in tax monies collected for school improvements.

This year, 80 percent of businesses paid their taxes on time. The increase in the number of prompt payments can be attributed to expanded online filings and batch filing, a new service this year that enables service companies to build client profiles, then file a large number of reports in a few keystrokes. This is just the beginning of government working for the people. If you have questions concerning Business and Commercial Services, feel free to contact our department at www.sos.arkansas.gov, (501) 682-3409 or (888) 233-0325.

NOTARY CORNER



The 85th Session of the Arkansas General Assembly passed three pieces of legislation that should be of interest to Arkansas notaries public. The new laws concern notaries who cater to Hispanic customers, the notarization of statewide initiative/referendum petitions and the general notary law as administered by the Secretary of State.

Act 66 of 2005 states that any notary public who chooses to use the term "*notario*," "*notario publico*," or other similar term in any advertisement, shall include in the advertisement the following notice:

"I AM NOT A LICENSED ATTORNEY AND CANNOT ENGAGE IN THE PRACTICE OF LAW. I AM NOT A REPRESENTATIVE OF ANY GOVERNMENTAL AGENCY WITH AUTHORITY OVER IMMIGRATION OR CITIZENSHIP AND I CANNOT OFFER LEGAL ADVICE OR OTHER ASSISTANCE REGARDING IMMIGRATION."

This notice must be published in both English and Spanish. This law intends to educate those members of the Hispanic Community who may be confused by the literal translation of "*notario publico*" to English. In many Spanish-speaking countries, *notario publicos*, or notaries public, have more authority than their U.S. counterparts. Their duties are more akin to those of attorneys and certain governmental officials.

Hopefully this notice requirement will reduce the miscommunication caused by the differences in our respective cultures and also decrease the occurrences of unscrupulous notaries preying on immigrants who have not learned this distinction while living and working in the U.S.

Act 1817 of 2005 intends to protect the signers of statewide petitions from the negligent acts of persons who verify a canvasser's signature. The act states, "Petitions shall not be disqualified for failure of a clerk, notary, judge, or justice of the peace to sign exactly as his or her name appears on his or her seal if the signature of a clerk, notary, judge, or justice of the peace is sufficient to verify his or her name."

The introduction and passage of this act exemplifies the frustration that some organizations encountered in the last election cycle. The actions of some notaries public hindered their efforts in collecting the required number of signatures to get their measures on the ballot. During the verification process, about one in five signatures had to be disqualified because notaries public did not sign their "official signature."

This series of events should underscore the importance of signing the official notary signature when notarizing documents. Arkansas law states that, "At the time of notarization, the notary public shall sign his or her official signature on every notary certificate. The official signature shall be the signature on file with the Secretary of State at the time of signing."

Persons using the services of a notary should not have to pursue specific legislation to protect the validity of their documents from the very officials that are charged to notarize them. When in doubt of your "official signature," you can refer to the commission that you received from the Secretary of State's office.

Act 2274 of 2003 updates and clarifies many aspects of the current notary law. It does not become effective until January 1, 2006. Further explanation of this act appears in the legislative update article that appears on page 3 of **Arkansas, Inc.** A detailed description on how the new law will affect Arkansas notaries public will appear in a later issue.

Monthly Training Sessions Offered for Notaries Public

Arkansas Secretary of State Charlie Daniels is proud to offer training seminars for current and aspiring notaries public. The monthly two-hour workshops will be offered at **no charge to participants**. The seminar will cover the qualifications, duties, responsibilities, prohibited acts and other topical issues related to being a commissioned notary public in Arkansas. Instruction will also be guided and supplemented by a power point presentation.

The seminar will take place on the **second Wednesday** of every month, from 9:00 a.m. until 11:00 a.m., in the Victory Building, 1401 West Capitol, Suite 250 in Little Rock. Parking will be the participant's responsibility although the

Victory Building management will be advised of the monthly event.

The seminar will be held in the Secretary of State's Division of Business and Commercial Services Conference Room and will be **limited to 12 participants**. To reserve your seat today, contact the Secretary of State's Office:

By mail — 1401 West Capitol, Suite 250, Little Rock, AR 72201-1094;

By phone — (501) 682-3409;

By fax — (501) 682-3437;

By e-mail — corporations@sos.arkansas.gov.

Watch for a schedule of upcoming seminars in your notary renewal notice or notary application packet.

Notary Public Course Outline

I. Notaries Public in Arkansas

- A. History of the Office of Notary Public
- B. Qualifications & Requirements
- C. Application Process
 - 1. Qualifications
 - 2. Surety Bond
- D. Jurisdiction

II. Powers of a Notary Public

- A. Taking Acknowledgments
- B. Taking Affiants & Depositions
- C. Making Declarations and Protests
- D. Attesting to Photocopies
- E. Administering Oaths

III. Notary Supplies & Records

- A. Notary Seal
- B. Notary Stamp
- C. Ownership of Seal & Commission
- D. Journal of Acts
- E. Sample Forms & Wording

IV. Responsibilities of a Notary Public

- A. Notary Fees
- B. Current Personal Information on File
- C. Resignation of Commission
- D. Renewal of Commission

V. Regulation & Liabilities of a Notary Public

- A. Surety Bond
- B. Complaint & Investigation Process
- C. Revocation of Commission
- D. Prohibited Acts

VI. Additional Topics

- A. Facsimile Signatures
- B. Notario Publico
- C. Electronic Notarizations
- D. Other Notarial Offices
- E. Notary Public Associations
- F. Apostilles & Authentications

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then transfer all other funds collected into the educational adequacy fund.

Corporate franchise tax collections for 2005 are expected to reach \$14 million, of which an estimated \$6 million will be transferred into the educational adequacy trust fund. On the last day of each month, the State Treasurer transfers the amounts available in the educational adequacy trust fund to the Department of Education public school fund. Under Arkansas law, the monies may be applied toward grants and aid for handicapped children, transportation aid, school food services, economic education and textbooks, as well as other areas.

**Need a speaker
for your next meeting?****Contact****Secretary of State
Business & Commercial Services
(501) 682-3409****BCS Processes Filings in Record Time**

The Business and Commercial Services Division of Arkansas Secretary of State Charlie Daniels' office has set a new record in processing annual franchise tax filings. Filings that once took until early October to process were completed by mid-July this year. Daniels said, "We are making great strides in serving the people of Arkansas in a timely manner."

Over 95,000 annual franchise tax reports were mailed to Arkansas business owners and foreign corporations doing business in the state of Arkansas in January 2005. Eighty percent of these reports, numbering 76,283, have been paid and updated in the SOS computer database. The other 20 percent remain unpaid; however, payment can still be made with penalty and interest applied. These unpaid entities will remain in a "not current" status until payment is made or until December 31, 2005, at which time their status as corporations able to do business in Arkansas will move to "revoked."

This overwhelming success can be contributed to a major media campaign that Secretary Daniels initiated, and personal letters sent to all business owners explaining the change in amount and time due for franchise tax payments this year. There were a record number of online franchise tax payment services this year, with the availability of XML filing and batch filing for CPA's and accountants.

**Secretary of State
Charlie Daniels**

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